

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES M. BURKE, et al.,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
HESTIA HOLDINGS, LLC, et al.,	:
	:
Defendants.	:
----- X	
HESTIA HOLDINGS, LLC, et al.,	:
	:
Counterclaimants,	:
	:
-against-	:
	:
JAMES BURKE, et al.,	:
	:
Counterclaim Defendants.	:
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Civil Action No.: 07-9909 (HB)(HBP)

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the memorandum of law and Declaration of Robert M. Travisano, Esq. submitted herewith, Counterclaim Defendants James Burke and Bradley L. Grow, in their capacity as Sellers' Representatives, along with Eateries Holdings, LLC, The Burke Family, LLC, Bradley L. Grow, The Grow Family LLC, The Bradley L. Grow Revocable Trust, Vincent F. Orza, Patricia L. Orza, Patricia Landi Orza Trust, Alexandra Maria Orza Trust, Patricia L. Orza Trust, Vincent F. Orza Jr. Trust, J.B. Edwards, Doug Davis, Phillips, McFall, McCaffrey, McVay & Murrah 401K Profit Sharing Plan, D. Keith McFall and Bill Totty, by and through their undersigned counsel, shall move before the Honorable Harold Baer, Jr., U.S.D.J., at the United States Courthouse, 500 Pearl Street, New York, New York 10007, on

a date and time to be set by the Court, for an Order pursuant to Federal Rule of Civil Procedure 12(b)(6) dismissing Count II (Breach of Covenant of Good Faith and Fair Dealing), Count III (Prima Facie Tort), Count IV (Breach of Fiduciary Duty) and Count V (Aiding and Abetting Breach of Fiduciary Duty) of the Counterclaims for failing to state a claim upon which relief may be granted.

PLEASE TAKE FURTHER NOTICE that opposing affidavits and memoranda of law, if any, shall be served and filed on or before February 4, 2008.

PLEASE TAKE FURTHER NOTICE that reply affidavits and memoranda of law, if any, shall be served and filed on or before February 11, 2008.

PLEASE TAKE FURTHER NOTICE that oral argument is hereby requested.

Dated: New York, New York
January 21, 2008

ENTWISTLE & CAPPUCCI LLP

By: /s/ William S. Gyves
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(Pro Hac Vice Applications Pending)

Attorneys for Plaintiffs and
Counterclaim Defendants

CERTIFICATE OF SERVICE

I, Josephine Ricca, hereby certify that on January 21, 2008, I caused a copy of the attached Notice of Motion, Declaration of Robert M. Travisano, Esq. and Memorandum of Law in Support of Motion for Partial Dismissal of Counterclaims to be served via ECF upon counsel for Counterclaimants as follows:

Keara A. Bergin, Esq.
Dewey Pegno & Kramarsky LLP
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New York, NY 10017


JOSEPHINE RICCA